

SUMMONS	
District Court: Thirteenth Sandoval County, New Mexico Court Address: 1500 Idalia Rd., Bldg. A. Bernalillo, N.M. 87004 Court Telephone No. (505) 867-2376	Case Number: D-1329-CV-CV-2015-01155 Judge: George P. Eichwald
Plaintiff(s): Krista Barnett v. Defendant(s): Safeco Insurance Company of America	Defendant Name: Safeco Insurance Company of America Address: c/o Office of Superintendent of Insurance Post Office Box 1269 Santa Fe, NM 87504-1269

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at Bernalillo, New Mexico, on 7/27/2015.

Electronically signed

/s/ Cloyd G. Hinkle

Signature of Attorney for Plaintiff

Name: Cloyd G. Hinkle

Warren F. Hire, II

Hinkle Law Offices, P.C.

Address: 3939 San Pedro, N.E., Bldg. A

Albuquerque, New Mexico 87110

Telephone No.: 505/883-4357

Fax No.: 505/881-6668

E-mail address: lleal@hinklelawoffices.com



Christal Bradford
Clerk of District Court

/s/ Candi Lucero
Deputy

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

EXHIBIT

B

RETURN¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, 2015, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:
(check one box and fill in appropriate blanks)

to the defendant _____ (*used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint*)
 to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (*used when service is by mail or commercial courier service*).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (*used when the defendant is not presently at place of abode*) and by mailing by first class mail to the defendant at _____ (*insert defendant's last known mailing address*) a copy of the summons and complaint.
 to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at _____ (*insert defendant's last known mailing address*).
 to _____, an agent authorized to receive service of process for defendant
 to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (*used when defendant is a minor or an incompetent person*).
 to _____ (*name of person*), _____, (*title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to before me this _____ day of _____, 2015²

My Commission Expires:

Judge, notary or other officer authorized to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

**STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT**

KRISTA BARNETT,

Plaintiff,

vs.

No. D-1329-CV-2015-01155

SAFECO INSURANCE COMPANY
OF AMERICA,

Defendant.

**COMPLAINT FOR PERSONAL INJURIES AND MONEY DAMAGES
AND INSURANCE BAD FAITH**

Plaintiff KRISTA BARNETT, by and through counsel, Hinkle Law Offices, P.C. (Cloyd G. Hinkle and Warren F. Hire, II), for her cause of action states:

GENERAL ALLEGATIONS

1. Plaintiff KRISTA BARNETT (hereinafter "Plaintiff") at all times material hereto was a resident of the community of Placitas, County of Sandoval, State of New Mexico.

2. Upon information and belief, Defendant SAFECO INSURANCE COMPANY OF AMERICA (hereinafter "Defendant Insurer") is a corporate insurance company, authorized to do business and doing business in the State of New Mexico.

3. This action is brought pursuant to the provisions of the Declaratory Judgment Act, §§44-6-1, et seq., N.M. Stat. Ann. (1978), the Unfair Trade Practices Act §§57-12-1, et seq., N.M. Stat. Ann. (1978), and the Trade Practices and Frauds Act of the Insurance Code §§5-12-1, et seq., N.M. Stat. Ann. (1978) and the common law.

4 Prior to September 1, 2013, Defendant Insurer issued two policies providing uninsured and underinsured motorists coverage under which the Plaintiff is an insured. Copies of the Declarations Pages setting out the policy period and limits of coverage are attached as Exhibits "A" and "B" and incorporated by reference.

5 On or about September 1, 2013, the Plaintiff suffered serious injuries and losses as a result of an automobile versus motorcycle collision caused by the negligence of Krysten Rodriguez, who was underinsured for the losses suffered by the Plaintiff. Plaintiff's injuries include, but are not limited to: 2nd and 6th rib fractures, a fracture of her right medial femoral condyle, a 2.0 cm laceration of her superior lip, a 12.0 cm laceration to her forehead, severe third degree burns, skin grafting to her left flank, arm and upper back, and a skin graft to her right knee. Ms. Rodriguez's carrier, Farmers Insurance Group of Arizona paid the limits of her insurance coverage.

6. Plaintiff is an insured under the contract of insurance and the circumstances of the accident are a loss within the definitions of the policies.

7. Plaintiff filed a claim under the provisions of the policies issued by Defendant Insurer for underinsured motorist coverage. Defendant Insurer has failed or refused to respond to Plaintiff's demand.

COUNT I
UNINSURED MOTORIST BENEFITS

8. Plaintiff realleges and incorporates paragraphs 1 through 7 of this Complaint, as if fully set forth herein.

9. On September 1, 2013, Plaintiff's parents, Richard L. and Debbie J. Barnett, had valid contracts of insurance with Defendant which included uninsured/underinsured motorist benefits.

10. As a result of the above-described accident, Defendant Insurer is liable to Plaintiff for all damages that Plaintiff could recover from the tortfeasor.

11. Plaintiff fulfilled her contractual obligations with Defendant demanding payment under the UM/UIM benefits portion of her parents' policy with Defendant Insurer in a timely manner.

WHEREFORE, Plaintiff prays this Court find in her favor and against Defendant Insurer, and enter judgment awarding the following relief:

- A. Damages in an amount sufficient to compensate Plaintiff for her past medical losses and pain and suffering;
- B. Damages in an amount to compensate Plaintiff for future losses, including incidental and consequential damages;

- C. Prejudgment and post-judgment interest at the statutory rate per annum, or as the Court may, in its discretion, award; and
- D. Such other and further relief as this Court deems just and reasonable.

COUNT II
BREACH OF CONTRACT

12. Plaintiff realleges and incorporates paragraphs 1 through 11 of this Complaint as if fully set forth herein.

13. Pursuant to its contracts of insurance, specifically the provisions for UM/UIM coverage, Defendant Insurer became obligated to pay Plaintiff's damages.

14. Defendant Insurer has failed to pay Plaintiff's damages, and continues to refuse to pay said damages, refusing to respond to Plaintiff's demand.

15. Defendant Insurer's continued failure to respond to Plaintiff's demand or pay Plaintiff's claim is a breach of the contract of insurance.

16. Defendant Insurer's continued failure to pay Plaintiff's claim, and further delaying tactics for settling this claim, has proximately caused damages to Plaintiff, including but not limited to, emotional distress and pre-judgment interest. Such damages were, also, reasonably foreseeable.

17. Defendant Insurer's continued failure to pay Plaintiff's claim is in willful and wanton disregard of Plaintiff's rights and Defendant Insurer's fiduciary duties to its insured.

WHEREFORE, Plaintiff prays this Court find in her favor and against Defendant Insurer and enter a judgment awarding actual damages as a result of Defendant Insurer's breach, multiple damages pursuant to statute for punitive damages in a sum to discourage future similar conduct and for her attorney's fees, interest and costs incurred herein.

COUNT III
UNFAIR INSURANCE PRACTICES

18. Plaintiff realleges paragraphs 1 through 17 of her Complaint as if fully set forth herein.

19. By their aforesaid actions, Defendant Insurer acted illegally in that they:
 - A. Failed to act reasonably and promptly in response to communications from the insured, contrary to §59A-19-20(B).
 - B. Failed to adopt and implement reasonable standards for the prompt investigation and processing of underinsured motorists claims, contrary to §59A-16-20(C).
 - C. Did not attempt in good faith to effect a reasonable settlement in a reasonable time contrary to §59A-16-20(E).
 - D. Forced the insured to file litigation by failing to respond and/or make an offer contrary to §59A-16-20(F).

20. The actions or failures to act above described were willful, entitling Plaintiff to her attorney's fees.

21. As a result of the violations set forth in the foregoing paragraphs, Plaintiff has suffered financial damage as described above, attorney's fees, and has suffered actual damages in emotional distress.

WHEREFORE Plaintiff is entitled to recover all damages incurred as a result of any violation of fair insurance practices as alleged in the foregoing paragraphs.

COUNT IV
BAD FAITH

22. Plaintiff realleges paragraphs 1 through 21 of her Complaint as if fully set forth herein.

23. Upon their face, it is clear that the policies provide underinsured motorist coverage for the loss alleged.

24. Although Plaintiff has incurred liability as a result of a loss covered by the policy, Defendant Insurer has failed and refused to honor its obligations as described in the policy, in the ways and manner described above.

25. As a result of the above-described bad faith of Defendant Insurer, Plaintiff has incurred attorney's fees and has suffered extreme emotional distress and mental anguish.

26. Defendant Insurer's bad faith denial of coverage was committed willfully, wantonly and in blatant disregard for the rights of Plaintiff, entitling Plaintiff to punitive damages in a sum sufficient to deter such actions in the future.

WHEREFORE Plaintiff requests judgment be entered against Defendant Insurer for all losses, attorney's fees and related expenses incurred as a result of the loss complained of, Plaintiff's emotional distress, plus punitive damages in an amount sufficient to punish Defendant and to insure that Defendant will refrain from the above-described conduct in the future, and attorney's fees and costs incurred herein.

Respectfully submitted,

HINKLE LAW OFFICES, P.C.

Electronically filed

/s/ Cloyd G. Hinkle

Cloyd G. Hinkle
Warren F. Hire, II
3939 San Pedro, N.E. Bldg. A
Albuquerque, New Mexico 87110
(505) 883-4357

Attorneys for Plaintiff

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

www.osi.state.nm.us

SUPERINTENDENT OF

INSURANCE

John G. Franchini – (505) 827-4299



Service of Process

Room 434

(505) 827-1291

DEPUTY SUPERINTENDENT

Robert Doucette – (505) 827-4439

August 5, 2015

Safeco Insurance Co. of America
C/O Corporation Service Company
123 E. Marcy St. Ste. 101
Santa Fe, NM 87501

Re: Krista Barnett Vs Safeco Insurance Co. of America
D1329-CV2015-01155

Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Summons, Complaint for Personal Injuries and Money Damages and Insurance Bad Faith, in the State of New Mexico on the above styled cause. Service has been accepted on your behalf as of August 5, 2015.

Respectfully,

A handwritten signature in black ink, appearing to read "John G. Franchini".

John G. Franchini, Superintendent

Enclosure

CERTIFIED MAIL 7012 3460 0000 1398 5403



C O R P O R A T I O N S E R V I C E C O M P A N Y®

HZC / ALL

Transmittal Number: 14107418
Date Processed: 08/07/2015

Notice of Service of Process

Primary Contact: Arlene Smith
Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02117

Entity: Safeco Insurance Company Of America
Entity ID Number 2781189

Entity Served: Safeco Insurance Co. of America

Title of Action: Krista Barnett vs. Safeco Insurance Company of America

Document(s) Type: Summons/Complaint

Nature of Action: Contract

Court/Agency: Sandoval County District Court, New Mexico

Case/Reference No: D-1329-CV-2015-01155

Jurisdiction Served: New Mexico

Date Served on CSC: 08/07/2015

Answer or Appearance Due: 30 Days

Originally Served On: NM Superintendent of Insurance on 8/5/2015

How Served: Certified Mail

Sender Information: Cloyd G. Hinkle
505-883-4357

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

KRISTA BARNETT,

Plaintiff,

vs.

No. D-1329-CV-2015-01155

SAFECO INSURANCE COMPANY
OF AMERICA,

Defendant.

PEREMPTORY ELECTION TO EXCUSE

Plaintiff KRISTA BARNETT, by and through counsel of record, Hinkle Law Offices, P.C. (Cloyd G. Hinkle and Warren F. Hire, II), pursuant to Rule 1-088.1.C.(1) NMRA, hereby exercises her statutory right to excuse the Honorable John F. Davis from presiding in the above cause of action.

Respectfully submitted,

HINKLE LAW OFFICES, P.C.

Electronically signed
/s/ Cloyd G. Hinkle
Cloyd G. Hinkle
Warren F. Hire, II
3939 San Pedro, N.E., Building A
Albuquerque, New Mexico 87110
505/883-4357

Attorneys for Plaintiff

Krista Barnett,
Plaintiff,

vs.

D-1329-CV-2015-01155

Safeco Insurance Company of America,
Defendant.

NOTICE OF JUDGE REASSIGNMENT

The above referenced case was previously assigned to the Honorable John F. Davis.

[XX] There was a Peremptory Election to Excuse filed on June 24, 2015.

This case is now reassigned to the Honorable George P. Eichwald effective July 16, 2015.



CHRISTAL BRADFORD
CLERK OF THE DISTRICT COURT

By: /s/ Jacqueline Gallegos
Jacqueline Gallegos, Deputy Clerk II

I, the undersigned Employee of the District Court of Sandoval County, New Mexico, do hereby certify that I served a copy of this document to all parties listed below on July 1, 2015.

Plaintiffs:

Krista Barnett,
Attorney Cloyd G. Hinkle, 3939 San Pedro, NE - Bldg. A, Albuquerque, NM 87110

Defendant:

Safeco Insurance Company of America,

/s/ Jacqueline Gallegos

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE
CERTIFICATE

jgr

THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF SANDOVAL
STATE OF NEW MEXICO

D1329CV2015-01155

KRISTA BARNETT,
Plaintiff(s),

VS.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendant(s),

ACCEPTANCE OF SERVICE

I, John G. Franchini, Superintendent of Insurance of the State of New Mexico, do hereby certify that a copy of a Summons and a Complaint for Personal Injuries, Money Damages and Insurance Bad Faith, on the above styled cause was accepted by me on behalf of SAFECO INSURANCE COMPANY OF AMERICA, on August 5, 2015, provided in Sections 59A-5-31 and 59A-5-32 NMSA 1978, and was received by said company on August 7, 2015, as shown by return receipt by Postmaster,



In Witness Whereof, I have
hereunto set my official seal
on this 13th of August, 2015

John G. Franchini
Superintendent of Insurance